



Linda S. Adams
Secretary for
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Department of Toxic Substances Control

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Arnold Schwarzenegger
Governor

August 27, 2009

Christopher Calfee
Special Counsel
Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

RE: AMENDMENTS TO CEQA GUIDELINES FOR GREENHOUSE GAS EMISSIONS

Dear Mr. Calfee:

The Department of Toxic Substances Control (DTSC) appreciates the opportunity to review and provide comments on the proposed amendments to certain guidelines implementing the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.) ("CEQA") as part of the Natural Resources Agency (Resources) Administrative Procedure Act rulemaking process. Specifically, these amendments implement the Legislature's directive in Public Resources Code section 21083.05 (enacted as part of Senate Bill 97 (Stats. 2007, ch. 185)). That section directs Resources to certify and adopt guidelines prepared and developed by the Office of Planning and Research for the mitigation of greenhouse gas emissions (GHG) or the effects of GHGs. (Pub. Resources Code, § 21083.05(a)-(b)).

DTSC believes that the proposed amendments provide important guidance to local lead agencies for assessing GHG emission impacts, and that the amendments are intended to allow local lead agencies the flexibility to choose the most appropriate methodologies for conducting GHG impact assessments. However, how such assessments would be conducted for projects subject to the specific environmental protection authority of state agency boards, departments and offices such as DTSC is unclear. For DTSC, such projects include approval of (1) hazardous waste removal actions, remedial actions, and corrective actions authorizing containment, in-situ treatment or the removal of contaminated soil gas, groundwater or soil from sites prior to future re-use and development, and (2) permits authorizing the construction and operation of new hazardous waste treatment, storage and disposal facilities and modifications to permits for existing facilities.

As you are aware, the decision as to whether a project may have one or more significant effects must be based on substantial evidence in the record of the lead agency. Because the proposed guideline amendments appear to be oriented towards

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local land use projects such as large redevelopment or transportation-related projects, DTSC is concerned that they may not provide the guidance necessary to develop the substantial evidence DTSC would need to support its discretionary decision that a project does not contribute to either an individual or a cumulatively significant impact. This lack of regulatory guidance, coupled with the de-facto absence of local or regional methodologies for establishing GHG emission thresholds of significance, would impact DTSC's ability to apply consistent GHG impact assessment methodologies and thresholds of significance for projects that are located in various locations throughout the state. The absence of such consistent methodologies and thresholds would make it difficult for DTSC to provide staff with guidance needed to support the conclusions in the environmental assessment required by CEQA for projects subject to DTSC's statutory and regulatory authority. In the event legal challenges are undertaken to those project determinations, delays may result that may impede DTSC's ability to approve and implement projects intended to protect human health and the environment.

DTSC is also concerned that the proposed guideline amendments relating to imposition of the various types of mitigation strategies intended to reduce or avoid significant GHG impacts may not be applicable to or feasible for statutorily mandated environmental protection-oriented projects undertaken by DTSC or other state agencies. This is particularly true as it relates to the proposed use of "offsets". DTSC feels that the development and imposition of the most appropriate and applicable state-of-the art GHG reduction strategies for such environmental protection-oriented projects be left to lead agencies such as DTSC because they are most familiar with the technical and scientific aspects of such projects, and any applicable mitigation strategies. Again, it appears as if the requirement for utilization of specific GHG mitigation strategies may have been conceived primarily from the local or regional planning perspective, and that mitigation strategies applicable to DTSC or other state agency environmental protection-related projects have not been considered.

DTSC recommends that the proposed guideline amendments be revised to require lead agencies to rely on GHG impact assessment methodologies and thresholds of significance being established by the California Air Resources Board (CARB) pursuant to Assembly Bill 32, the Global Warming Solutions Act of 2006 (Stats. 2006, ch. 488). This approach would ensure statewide consistency in the analysis and assessment of GHG emission impacts by lead agencies such as DTSC. This approach would also be consistent with CARB's efforts in the development of statewide GHG emissions reduction goals under Assembly Bill 32 and Governor Arnold Schwarzenegger's 2005 Executive Order directed towards lowering our state's GHG emissions.

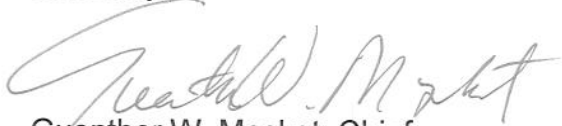
DTSC recognizes that the recommended approaches for setting GHG significance thresholds currently under development by CARB do not fully take into account GHG

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emissions that may be generated by projects over which DTSC has statutory authority. Consequently, DTSC intends to assist CARB in inventorying the types and numbers of these various projects and estimating their typical GHG emission rates. DTSC suggests that the two agencies confer prior to CARB establishing thresholds of significance, in order to ensure that such thresholds are reasonable, and that they are expressed in a manner that lends to straightforward computation of GHG emission rates for DTSC-related projects. DTSC believes this would meet the intent of both Assembly Bill 32 and Senate Bill 97, and the environmental review requirements of CEQA and the implementing guidelines.

Thank you for the opportunity to provide comments on the proposed CEQA Guidelines amendments. Please contact me at (916) 322-8955 if you should have any questions regarding these comments.

Sincerely,

A handwritten signature in dark ink, appearing to read "Guenther W. Moskat", is written over a horizontal line.

Guenther W. Moskat, Chief
Office of Planning & Environmental Analysis

See next page for cc

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